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ABSTRACT

The experience of New York University after the Cambodia-Kent crisis of May 1970 when court action nullified faculty decisions on the taking of exams, and the continuation of classes is indicative of the intrusive constraints derived from external forces on effective faculty self-government. This paper discusses: (1) the natural and intrinsic limitations on faculty participation in governance that include: the delegation of power by governing boards, the frequent absence or inadequacy of the structure for faculty self-government, the often negative faculty attitudes toward governance, the rapid expansion of higher education that has rendered decisionmaking more remote, and campus unrest; (2) the external threats to autonomy that include: restrictive and punitive legislation, recent court litigation, which has occasionally become a vehicle for criticism and repression of campus orthodoxy, campus surveillance by police and FBI agents, collective bargaining, the serious financial problems facing higher education, and the self-regulation process; and (3) some ways that faculty can combat these incursions and thus restore some control over the character and destiny of their profession. (AF)

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# THE ECLIPSE OF FACULTY AUTONOMY

Like many progressive institutions, New York University recently created a universitywide senate. This comprehensive body included student, faculty staff and administrative representatives. Its jurisdiction covered a broad range of academic and non-academic campus issues. When the Cambodia-Kent crisis reached Washington Square last May, it was only natural for the new Senate to consider when and in what manner the school year should conclude. A meeting of the Senate on May 6 resolved that each school or college within the University should set its own requirements for course completion. The resolution went on to urge the several faculties to suspend formal classes for the balance of the semester -- the remaining ten days or so -- and arrange suitable options for examinations and grades. Acting under this authority the faculty of the Law School permitted its students to take final exams or not, as they chose, and to receive credit for the work done to date. Most students, in law as well as other fields, left the campus confident of what would have seemed obvious to the university community -- that the Senate could sanction and the faculty could adopt course completion and grading procedures suiting the emergency.

The limits of autonomy were soon to be tested, however, in ways that few members of the faculty could have anticipated. The law school was the first to be chastened. Shortly after reading of the faculty resolution, the New York Court of Appeals ruled on its own motion that students wishing to take the bar examination must complete all their courses by regular written tests. (Other options, such as papers, were permissible only if

consistently allowed in other years.) To make clear the locus of responsibility, the judges added that rules on eligibility for law practice "may not be relaxed, the standards lowered, by decision or resolution of a majority of the faculty of a law school." To deviate in the way NYU had done would "tend to downgrade the equality of legal education in this State." Thus the students reluctantly returned late in May to Washington Square to take the examinations that the Court of Appeals, not the faculty,deemed essential for certification of professional competence.

The second blow to NYU carried even graver consequences for university autonomy. A fireman in Queens, who had worked hard to send his son to an expensive private university, was angered by NYU's alteration of the course completion procedures. Late in the summer he filed suit in small claims court for refund of the sum of $277.40 -- a pro rata share of his son's tuition and fees which reflected the education not received between May 6 and 19. In October the small claims judge awarded not only recovery to the aggrieved father but a serious blow to the already beleagured University. Recognizing that the decision to alter or suspend classes was that of the Senate and not of the President or Chancellor alone, the judge nonetheless thought the modification illegitimate. Testimony in court indicated not only that the Senate had seats for 20 students, but that more of the students than of the faculty members were probably present on May 6. Yet the judge found "representation of the student body in [the] Senate conspicuous by its absence."

The opinion ventured grave doubt whether the Senate's action "reflects a condition of its isolation from environmental influences then

existing, indifference to its legal obligations to the student body as a whole, and to its moral responsibility to Society." Then, paraphrasing Irving Kristol, the court showed its disdain for the professoriat: "The zeal to reform by nationwide faculties has never yet satisfied itself by coming up with any single reform which could be interpreted as at the expense of faculty privilege."

Other arguments were offered in the University's behalf -- that the emergency conditions of May made it impossible to continue classes as usual; that the faculty had been available during the month and had provided alternative instruction and examinations; and that the university bulletin reserved the right to change academic requirements at any time. Rejecting these claims out of hand, the court concluded that a contract had been unjustifiably breached, that the student had been denied an education to which he was entitled, and that the amount of the loss could be set at exactly $277.40.

A third event deserves mention here although it took place some months earlier. During the summer of 1969, New York University (along with most colleges and universities in the state), filed with the State Commissioner of Education an updated set of campus conduct regulations. The filing was required by the special Henderson Law. The statute directed the governing board of every institution of higher learning in the state to "adopt rules and regulations for the maintenance of public order . . . and provide a program for the enforcement thereof. Such rules and regulations shall govern the conduct of students, faculty and other staff as well as visitors . . . ." The sanction for noncompliance was loss of eligibility for all forms of

state aid -- a heavy penalty for New York's private as well as public colleges since the inauguration of the Bundy Act payments.

The law did not absolutely forbid faculty and student participation in the drafting process. But neither did it, on the model of an earlier law dealing with State University Trustee rulemaking, mandate such consultation. Moreover, the deadline for filing -- August 15, 90 days after the effective date -- was hardly conducive to maximizing faculty or student input.

The faculties of New York's several hundred institutions of higher learning remained curiously silent about the law; scarcely a voice was heard in protest against institutional compliance. In a recent paper Professor Douglas Dowd of Cornell has attributed this "passive acquiescence" by New York professors to "faculty hypocrisy." To Dowd the law represented "so clear [a] violation of the independence of the universities" that the faculty silence could be explained only in this way, for professors around the state "were at the same time resisting students' demands about the war, the draft, racism, social deterioriation, etc. -- in the name of academic freedom and independence."

With all deference to Professor Dowd, the charge of hypocrisy seems unconscionably harsh. It is also inaccurate, and largely misses the point of what is happening to the professoriat today. For not being sufficiently attentive to developments in Albany the faculties can perhaps be blamed. Perhaps they could be faulted for relaxing concern about campus governance and reverting to libraries and laboratories for the summer. But the problem clearly is not one of hypocrisy -- a charge that would stand only if the faculties of New York's colleges knew the

full impact of the Henderson law and still let it go unchallenged.

This experience illustrates the central thesis of the present paper: While most studies of faculty participation in university governance have stressed the neutral, intrinsic limitations on effective self-government, the greater and more intrusive constraints today derive from external forces that are poorly understood (if perceived at all) by most academicians.

The analysis of this central thesis requires first an examination of the natural and intrinsic limitations on faculty participation -- the traditional and well understood reasons why faculty self-government does not always function effectively. Thereafter we shall turn to the much more novel and more alarming threats posed for faculty autonomy and self-determination by external sources. We shall conclude with a series of suggestions for ways that faculty and faculty groups may combat these novel incursions and thus restore or retain an absolutely essential control over the character and destiny of their own profession.

## I. INTRINSIC LIMITS ON AUTONOMY

The evolution of faculty participation in university governance is not easy to trace. The perceptive report of the NASULGC Committee on Student-Faculty-Administration Relationships, chaired by President Robben Fleming, observed last year: "Faculty influence in decision-making process had not taken a positive rise, historically. Rather their influence has tended to oscillate." There have been periods of great strength or even dominance -- the hegeomony of the tutors at colonial Harvard and William and Mary, and the years right after World War I when the AAUP, the Berkeley Senate and the professional associations were young and lusty. But the cycle has always reversed; the tutors in the colonial colleges were replaced gradually by lay board members, and the faculty power of the 20's was undercut by the depression, not to return until the tight labor market of the 1960's. Today it appears that faculty power and autonomy are being rapidly eroded once again. The eroding forces are in part familiar, in part novel. We begin with the traditional limitations, most notable among which is the formal circumscription of power delegated by governing boards where all power theoretically resides.

A. Delegation by Governing Boards. The delegation of power to faculties has always been partly de jure and partly de facto -- the former because trustees know there are certain matters better handled by the faculty than anyone else; the latter because the board does not have time or inclination to exercise all its retained power and the faculty is often able to preempt the resulting vacuum. But there are important qualifications at both levels. A de facto delegation usually involves a delicate thread that may be cut if the power acquired by the

faculty is so exercised as to annoy or threaten the trustees. Of course the board does not often reassert its own right to do what it no longer wishes the faculty to do; as with the control of student discipline at Berkeley in December, 1964, it simply shifts that power to some other, more trusted constituency, usually the administration.

A de jure delegation to the faculty is superficially more durable. Yet there are two important limitations on its exercise. First, the attitudes and opinions of trustees are not always as generous as the formal delegations they have made. The recent findings in Hartnett's study of governing boards suggests how fragile may be the basis of standing orders and bylaws granting power to campus groups. After noting that over half the trustees sampled feel faculty and students should not have major authority in eight of sixteen typical campus decisions, and almost two thirds feel the selection of an academic dean is primarily a regental responsibility, Hartnett concludes rather cautiously that these data "underscore some of the very wide differences of opinion among members of the academic community as to who should govern."

Occasionally these differences break into the open. Selective withdrawals of formally delegated authority are by no means unknown and are in fact increasing. The Regents of the University of California, for example, reasserted the power over curriculum given to the Senate Committee on Courses for the sole purpose of denying credit to the Eldridge Cleaver course and to students originally enrolled in it who later signed up for individual study with a psychology professor. Two years later the Regents withdrew long delegated authority over nontenure faculty appointments just long enough

to deny a second year to Angela Davis -- against the advice of every group on the UCLA campus that had appraised her first year performance.

The selective reassertion of power by the University of Missouri's Board of Curators has been much less publicized but is perhaps more ominous. Largely as a result of the reconstitution of courses and the relaxation of examination requirements in May, the Board at its June meeting repudiated an agreement between the Chancellor of the Columbia campus and a faculty-student group under which passing grades could be awarded on the basis of work done through May 13. In an effort to discover the real culprits, the Board also suspended for ten days without pay the tenured chairman of sociology for refusing to give the Board the names of members of his department who had altered their courses.

The withdrawal may occur indirectly as well as directly. Last summer the Ohio Board of Regents amended their Rule 2, which governs allocation of funds to state-supported and state-assisted campuses. The new clause provides that all state funds shall be withheld from any campus that is closed as a result of disorder. The impact on autonomy is not at once apparent because the decision whether or not to close remains at the campus level. Yet by altering so drastically the consequences of that decision, the Regents have in effect removed all options from the campus Presidents and faculties. No campus is likely to commit fiscal suicide by closing unless it becomes physically impossible to remain open. Meanwhile vastly greater leverage is given to external agencies that have the power to close the campus during disorder -- for example, the county prosecutor and state court that ordered Kent State's doors indefinitely closed on May 4. Thus the regental action does in fact constitute a major impairment of campus autonomy, albeit by subtle means.

One basic point emerges from these recent reallocations of university authority: Governing boards never delegate the full range of their legal power to campus constituencies, nor would it be appropriate for them to do so. Yet much of the formal or informal delegation on which faculty and administrators depend for their authority and their role in governance turns out to be rather fragile. Any study of the limits on faculty autonomy must begin here.

B. Structure of Faculty Self-Government. Even when the power is delegated, the faculty is not always organized to receive and exercise it. An American Council on Education survey of 1000 colleges and universities showed that only 104 had faculty senates; 196 had faculty organizations other than a senate; 149 had faculty representation through a council or committee; 441 had faculties meeting under administration leadership; 14 relied on the AAUP chapter; and the remaining 77 had no form of faculty organization or leadership. Even where an autonomous faculty organization does exist, Harold Hodgkinson observes that its origins are often rather recent and its differentation or weaning from the administration still in process. He quotes as "the most typical comment with regard to faculty senates" one respondent's view that "the senate is still young and hasn't found its role."

One of the most impressive developments during the last two years is the emergence of university-wide deliberative or legislative bodies. Yet the identity crisis may be most acute here. It was the University of New Hampshire's new campus Senate which so attracted the Chronicle of Higher Education that a staff reporter was sent to Durham for a front-page feature story. Yet it was also the University of New Hampshire that

experienced last spring a crisis in governance which the Senate was apparently powerless to solve. All 17 department chairmen in the College of Liberal Arts resigned in February to protest the President's appointment of an arbitration panel to resolve a dispute over the teaching of an extra section in a political science course. The chairmen complained that the President had gone over their heads in an attempt to appease the students without considering the department's interests. The resignations were eventually withdrawn after the President acknowledged he had been "remiss" and agreed there was a need for "procedures through which the needs of the university community can be expressed in an atmosphere of calm." (The Senate, in existence since the previous fall, apparently was not consulted about the political science crisis.)

Thus there is some doubt whether the faculty is effectively organized to receive and exercise the power delegated by the governing board. And if delegated power is in jeopardy, recently or precariously organized faculties are in a poor position to protest selective withdrawals that even the powerful Berkeley and UCLA Senates cannot prevent. Thus the matter of structure is an important even if familiar and tangible limitation on self-government.

C. Faculty Attitudes Toward Governance. Other limitations are self-imposed. There is mounting evidence that faculty (like students) knowingly fail to exercise the full range of power that is granted them. Moreover, as Archie Dykes noted in his intensive study of the faculty at one large university, there is "a disturbing discrepancy between what the faculty perceived its role to be on the campus . . . and what its role is in reality." The same study and others have noted a growing ambivalence

on the part of faculty toward participation -- a broad consensus that participation was important but much individual reluctance about becoming involved. Dykes found that many who agreed in principle that participation was essential "placed participation at the bottom of their professional priority list and deprecated their colleagues who do participate."

Two observable data reflect this ambivalence. One is the low rate of attendance at non-crisis faculty and senate meetings; the ACE survey put the average figure at about 15% of eligible membership. The other indicium of ambivalence is the tendency which the recent studies of T.R. McConnell and associates have shown for committee positions and chairmanships to concentrate in a rather few experienced hands. (Two explanations are plausible -- one that the senate "oligarchs" forcibly monopolize power and exclude younger men who seek a share of that power; the other, more likely, that those who lack power grudgingly acquiesce in its uneven distribution because it suits their own needs and priorities.)

Many factors may explain these phenomena. We now review those factors rather sketchily, both because the job has been done thoroughly elsewnere, and because these limitations are not our principal focus.

1. Unrepresentative Character of Faculty Government. There is a kind of circularity at work here: The unrepresentative character of faculty senates results largely from voluntary abstention by the great majority of members. Then, as the leadership becomes more exclusive and "oligarchic," other faculty who might once have participated actively -- the next 20% or so -- are alienated from further involvement by the very condition of their exclusion. In his paper on faculty politics prepared for the Linowitz Commission, Seymour Martin Lipset shows how efforts to

democratize faculty senates are often counter-productive. The proliferation of committees simply enhances the hegemony of the oligarchs and thus in the end makes the whole system even less representative. "In effect," Lipset concludes, "faculty elections often serve to give populist legitimacy to locally oriented, relatively conservative professional faculty politicians, who rise to the 'top' because the 'cosmopolitan,' more research-involved, liberal faculty see campus politics as a waste of time in normal periods." Thus the isolation of the senate leaders from their constituents may in fact be a circular process, accelerated rather than slowed by attempts to expand channels of participation.

2. The politics-research dilemma. There is of course one obvious reason for ambivalence about participation: Politics competes with many other professional and scholarly activities that are not only likely to be more rewarding but more enjoyable as well. Yet the tensions are more complex than often supposed. Not all those who are deeply involved in faculty government have chosen to pursue politics rather than scholarship. Indeed, Mortimer's study of the Berkeley Senate suggests the opposite pattern of preference: "emphasis on research productivity and other research-oriented standards," he notes, "is . . . [an] important factor in elite control of the Senate." Thus the generalization "that the ruling elites rarely include the scholarly productive" simply does not bear out under careful scrutiny of one of the oldest and most powerful of faculty bodies.

New hypotheses are needed to explain the highly individualistic resolution of the politics-scholarship conflict. The experience at Berkeley may well be atypical simply because the Senate is so powerful and so autonomous that participation has independent rewards available on few other campuses. Perhaps some professors find in senate committee

chairmanship and other offices a compromise between total commitment to administration -- which would virtually preclude scholarship -- and complete withdrawal from the seats of power. Others are undoubtedly pressed into service, against their will and initially for short terms, only to discover that they really enjoy senate politics and find in it welcome diversions from academic pursuits. For still others, the experience of campus politics is undeniably relevant to scholarly work -- not only for those who study higher education per se, but for many in the behavioral sciences who have developed scholarly interests in the conduct, attitudes and organization of campus constituencies. The resolution of the dilemma about participation is thus sufficiently individualistic that pat generalizations no longer suffice.

3. The institutional-professional dilemma. Another source of faculty ambivalence is the dual perspective of the modern professor. He has allegiance both to the institution where he teaches and to the profession or discipline of which he is a member. The resulting dilemma is not so much one of whether to participate in governance, but where. Take the professor who is especially concerned about preservation of academic freedom. If he has only a limited amount of time to devote to the cause, he must choose among several available channels: The academic freedom committee of his campus senate; perhaps a statewide senate committee if he belongs to a large system; the campus chapter of AAUP; a national AAUP committee; or -- increasingly within recent years -- the academic freedom committee of his own professional association. (One colleague at Berkeley, badly burned by an experience at another campus, has committed his time at several levels; he is an active member of the newly formed academic freedom committee of his professional society, of the Berkeley Division's academic freedom committee and of the campus AAUP chapter. Such multi-level involvement is rare and usually costly to the professor's other commitments.

In the particular case the conflict is mitigated by a growing professional interest in the study of academic freedom and faculty organization.)

4. Political naivete of the professoriat. People seldom participate extensively in organizations they do not understand. Faculty members are no exception. Since most of them are not expert in politics, the low levels of participation are at least partly attributable to a lack of sophistication. There is also much naivete about the realities of higher education and its administration. Archie Dykes was puzzled, for example, by the lack of awareness even among senior faculty of the nexus between "academic" issues (over which faculty control was thought vital) and "budgetary or fiscal" questions (which most professors were content to leave to the administrators). But the causal relationship between naivete and nonparticipation is uncertain; we do not know whether professors stay out of politics because they do not understand its intricacies, or whether withdrawal caused by other forces simply denies them the political education that enforced participation would bring in time. Whichever way the relationship runs, the result is clear enough: Professors like anyone else will avoid activities they find bewildering and will abstain from making decisions to which they may be bound but feel they cannot influence.

5. Ambivalence over the goals of faculty organization. Most legislative or administrative bodies have fairly clear mandates. They are expected to enact or implement laws, promulgate regulations, or declare general policy which other bodies must interpret and apply. Faculty senates are,however, uniquely lacking in focus. Ambiguity exists at two levels. First there is the matter of jurisdiction, notably the doubt that tormented many faculties last spring whether a senate ought to pass

resolutions condemning the Indochina war. Some faculty groups have steadfastly declined to legislate in the realm of foreign policy or even domestic off-campus matters. Others felt the war so compelling and so special a case that an exception could conscientiously be made. Still other senates preserved their purity at least in principle by resolving into committees of the whole, unofficial meetings of individual faculty members and the like to state their members' views on the war without binding the senate per se to a political position. There is much doubt whether the principle was worth going to such lengths to preserve; there is even greater doubt whether such technical circumvention did in the eyes of hostile trustees or legislators preserve the principle of neutrality at all.

Ambiguity and lack of focus exist at a second level. Technically even the most powerful faculty group is only an advisor to the administration in many areas where it exercises almost complete de facto authority. The dilemma is often acute: If the faculty tries to assert officially the power it holds in fact -- for example, by making a recommendation it knows in advance the president will not or cannot accept -- the reins are quite likely to be pulled up short. Thus there is an unwritten rule recognized by both parties to the informal arrangement -- advice will not be sought where the answer would have to be unacceptable, and advice will not be given where the response would have to be rejection. The position of the senate under these conditions remains a rather uneasy, sometimes schizophrenic one.

Before leaving this subject something must be said about the deepest ambivalence of all -- the faculty-administration relationship. T. R. McConnell has recently suggested that "tension is inherent in relationships between faculty and administration." In reaching that conclusion, he

endorses the views of Terry Lunsford and tends to reject the conflict-minimizing impressions of the Gross-Grambsch goals survey. Feeling that "the real discrepancy [between faculty and administration attitudes] is much greater than the questionnaires revealed," McConnell suggests that the administrators "acting consciously or unconsciously on the myths by which they have tried to explain their conduct to themselves and to the faculty, professed that their values and goals were the same as those of the academics."

Is it not possible that both Lunsford and the goals survey are correct? Several lines of reconciliation are worth pursuing, since the discrepancy between the studies is disturbing. First, the consonance or divergence of values varies enormously from one campus to another, depending on the degree to which the administration reflects an academic-professional or a bureaucratic orientation. In the community college, the typical four year state college and even in the public university with relatively recent antecedents as a teachers college, the president and his associates are likely to be much more bureaucratic than academic in value and outlook. The leadership ethos tends to be very different in the large university or the small elite liberal arts college. In fact, one would expect to find far greater value differences between administrators in these two types of institutions than between president and professor on the academic campus. For this reason as well as others, it is risky to generalize even about values, much less to abstract comparisons from the generalizations.

There is a second reconciliation that bears directly on faculty autonomy. Professors and administrators may share almost identical values and attitudes on myriad relevant issues without necessarily working well

together. The extent to which harmony in practice accompanies empathy in value depends upon many factors -- personalities on both sides, structures within which interaction occurs, policies of the governing board toward both constituencies, etc. Even where values are virtually identical -- indeed especially where they are -- a measure of conflict and tension between faculty and administration is not only inevitable but desirable. The faculty that loves the president or chancellor too much and is excessively cozy with his aides is perhaps in greater damage of losing its autonomy than the faculty that is always at war with the administration. Hence a finding that values are shared is not necessarily incompatible with a perception of tension and conflict.

Lessons for faculty autonomy begin to emerge at this point. Clearly an atmosphere of complete distrust is not conducive to effective faculty self-government. If the chairman of the senate cannot even talk to the president, the absence of communication is bound to bring a centralization of power. Where the senate is powerful, of course, such alienation is unlikely to exist -- not so much because the faculty can force its way into administrative councils, but because there has probably been extensive faculty consultation in the selection of the president and other administrative officers. In this situation, autonomy and effective self-government are threatened by proximity rather than by distance, by the desire to achieve and maintain consensus with the administration even at the expense of asserting faculty interests in opposition to the president.

6. Ambivalence over the sharing of power. Because of recent efforts to increase student participation in university governance, faculties have come under strong pressure to share more widely the power they enjoy. Earl McGrath has reviewed at length the extent and nature of the response, in terms of national trends and patterns. There have

been several especially bitter battles, such as the 50-50 student-faculty controversy that deeply divided Hunter College last spring. (The even-balance proposal, pressed hard by students and some junior faculty, was rejected by the senior faculty and administration. Some months later, almost unnoticed, the Board of Higher Education did approve a new structure for Hunter which substantially increased the student share.)

Far less is known about the faculties that have declined to share their power -- those like the Berkeley and UCLA senates that have refused to add students to standing committees. One tentative hypothesis may help to explain the wide variations in faculty hospitality to student pressures. Where faculty structures are recent or weak, the resistance to adding student members to committees or to the creation of new university-wide bodies has been rather low. Indeed, there may even have been faculty enthusiasm for such reform; 40% of the seats in a strong senate may look better than 100% of the seats in an ineffectual forum. On the other hand, where the faculty has already achieved the kind of power found at Berkeley, UCLA and Harvard, the degree of resistance appears to have been high because the pie sought to be divided is so much larger and richer. While alternative arrangements have been made for limited student participation, the power actually shared has tended to be more that of the administration than that of the faculty. (Perhaps an administration facing a strong and autonomous senate sees in student partnership some of the benefits that a relatively weak faculty perceives in the creation of a university-wide senate.) In short, it appears that the willingness of a faculty to share the power with other constituencies varies inversely with the degree of power it presently enjoys. Where the faculty is strong, sharing is regarded as a form of dilution. Where

the faculty is weak or disorganized, sharing is at worst neutral and at best a possible source of strength.

These several forms of ambivalence clearly impose limitations. It is far less clear what they limit. Ambivalence does reduce the probable attendance at senate meetings, the volume of business that can be transacted by the senate, the number of volunteers for committee positions, and perhaps the number of committees that can be staffed at all. Ambivalence about participation may undermine somewhat the legitimacy of senate acts among the unrepresented -- although in the absence of contrary action by other strong units the challenge to legitimacy remains abstract. Yet there seems to be little correlation between the power exercised by a faculty organization and the commitment to it; the turnout for Berkeley senate meetings except in time of crisis is about the national average for large universities. Perhaps the most that can be said is that faculty ambivalence does limit the capacity of a senate to be a truly representative body, and may in subtle ways erode its power. There is little evidence that autonomy suffers seriously from withdrawal or abstention.

C. The Changing Scale and Structure of Higher Education. Few trends are clearer in recent years than the rapid expansion of higher education. The change of scale, Daniel Bell has remarked, is "unprecedented in the history of the university" and is not simply linear but "is a change in form, and consequently in institution." Yet structures have not changed to keep pace with the expansion. Harold Hodgkinson has observed: "At the heart of the problem of government, for campus and society, is the fact that we have drastically increased the populations upon which governments must work, but we have made almost no change in the

basic configurations of governance with which we try to provide the social cement which is a necessity for all social institutions." Robben Fleming, in his report to the National Association of State Universities and Land-Grant Colleges, finds evidence that "the influence of faculty in decision-making is declining due to the rapid growth of higher education, the disinterest of many faculty members, and the resulting tendency to centralize authority above the faculty."

The changes in scale that render decision-making more remote have occurred not only at the campus level but, even more, in statewide systems. T.R. McConnell points out that faculties in comprehensive university systems "find themselves constrained by remote system-wide governing boards and by the policies and practices of distant central administrations"; campus faculties are "limited in their authority" over vital academic questions. Several years ago the AAHE-NEA Task Force report on faculty participation in academic governance reviewed trends in statewide control over campus decision-making and queried, "What steps can the faculty take if decisions reached on a particular campus are overturned at higher levels of control?" Walter Oberer adds his concern that the rapid growth of statewide systems "poses difficult problems for the faculty in the effort to be heard in effective fashion as to matters of consequence to it upon which it has much to contribute."

The problems of size and scale are undeniable. But it is much less clear that emergence of statewide systems impairs faculty autonomy. It is almost tautological to say that as more and more decisions are made at the central system level, the influence and power of the campus faculty declines. The real issue is whether the importance of faculty as a whole is reduced.

The answer to this more appropriate but more complex question depends upon the health and vigor of the statewide faculty organization. As the recent studies of Eugene Lee and Frank Bowen have shown, that factor varies quite widely from one system to another according to history and tradition, governing board authorization, central administration attitude, faculty awareness of common concerns, etc. Where a powerful and tightly organized statewide senate has emerged with statewide committees paralleling and coordinating the work of the campus committees, Lee and Bowen suggest it is far from clear that faculty have lost power. And where power is lost because of the absence of such central organs, the vacuum may be only transitional. Particularly where the statewide administration office is located at or near the flagship campus, a statewide faculty organization may ultimately prove even more effective.

D. The Impact of Crisis. The effect of campus turmoil upon faculty participation and autonomy is still speculative. "The scholarly professor," observes Lipset, "will rise in a crisis to deal with problems of governance, but he soon lapses again into his own affairs." Charts of Senate meeting attendance at Berkeley reveal sharp jumps for crisis meetings but only slightly higher than average turnout even for non-crisis sessions during troubled years. Thus we do know what happens to the senate during crisis; what we do not know is what happens thereafter.

It does appear that campus unrest shifts to some extent the focus of faculty-interest -- typically away from academic or fiscal issues toward such matters as student discipline, campus security, war-related research and the like. But the shift may be transient. "In periods of crisis," notes McConnell, faculties "may step in to assert control over student behavior. Once crisis passes, however, they usually tire of this responsibility and turn it over again to administrative officers, usually with

some remnant of faculty participation through a disciplinary committee."

Meanwhile the possibility of recurring crises makes more difficult such vital tasks as long range-academic planning. Constant diversions (or fear of them) tend to keep a faculty preoccupied with short range concerns, whether or not it must constantly put out fires and pass resolutions on momentary questions.

Where the crisis is severe, the status and power of the faculty may depend directly upon the perception of its effectiveness during the crisis. If the administration and governing board feel the faculty has been supportive or has played a vital mediating role, an increase in faculty power is predictable. If the faculty is perceived as obstructive or cowardly there is likely to be a major reorganization, with some powers formerly exercised by the faculty passing to newly appointed administrators closer to the president, who can act faster and more predictably in time of need.

Finally, campus unrest is likely to lead to demands for the restructuring of internal governance. The faculty may or may not benefit from such reforms, according to several factors we have discussed earlier. Along the way, however, the faculty will probably have to commit substantial time and energy to the process of reorganizing; where major structural changes have been made -- at Columbia, Toronto, Urbana, Oklahoma and elsewhere -- the better part of a year has been devoted to planning, discussion, persuasion and adoption. During that time the normal functions of the old senate may not have come to a halt, but the diversion of time and talent of senate stalwarts has impaired the efficiency of a forum contemplating its own extinction.

The effects upon a faculty of periods of crisis are therefore relatively uncertain. Whether the faculty organization gains or loses will probably depend upon such factors as its strength before the crisis, how well it performs (from the administration and governing board point of view) during the crisis, and how much energy and credibility its leaders still possess when the crisis is over. We need much more study of these factors in order to understand this vital link between events and institutions.

## II. EXTERNAL THREATS TO AUTONOMY

We might pause to take stock at this mid-point. We have reviewed many factors that do limit faculty participation and may limit the autonomy or effectiveness of faculty organizations. While these familiar trends and pressures have been under study, new forces have emerged which pose much graver threats for internal governance. The day is long past when (if ever) one could analyze and reform university governance in vacuo. Perhaps there has never been a time when the capacity of campus constituencies to shape and direct their own destiny was so severely circumscribed from without. It is essential to understand these forces, what damage they have already wrought, what their potential is for future injury, and how they may be dealt with if not controlled. We shall review them under several broad headings: legislation, litigation, surveillance, unionization, austerity, and self-regulation.

A. Legislation and Autonomy. Ralph K. Huitt remarked recently that many state legislators and congressmen, upset by campus disorders and inclined to blame "permissive" administrations, "would intervene in a minute if they only knew what to do." The evidence is mounting that legislators do know just what to do, or at least that they are learning about higher education much faster than the educators are learning about legislation. Take, for instance, the urgent warning issued last summer by Governor Marvin Mandel of Maryland to the University's Board of Regents. The National Guard had just left the College Park campus after a month of tense patrol duty. The legislators were in an angry mood, though Maryland had been relatively free of punitive laws. Mandel, sensing the climate in Annapolis, warned the Regents that the University must "recapture the power to protect itself" in order to avert stringent new legislation. He continued: "I think if the Board doesn't act, the legislature will. Out of emergency situations, sometimes you get bad legislation."

In the realm of bad legislation, top honors must go to the 108th Ohio General Assembly. Amended House Bill 1219 was enacted shortly after the Kent State killings and

took effect in the fall. In its original form, as passed by the lower house, the bill provided for automatic suspension of a faculty member upon his arrest for any of a variety of criminal offenses, on or off the campus, including several new crimes created by the bill itself. Dismissal was to be automatic upon conviction. The Ohio senate refused to pass the bill in this form. Negotiation and compromise produced an acceptable substitute, under which the arrest of a faculty member (or student or staff member) set in motion a rather complex process. It begins with a hearing before a referee (an attorney in the county, who has no connection with the university and is chosen by the Regents) essentially on the question of probable cause. An adverse finding by the referee mandates suspension without pay pending the resolution of the criminal charge. If a conviction results, dismissal is automatic without any further university proceedings. (If acquitted, the defendant must be reinstated, but without back pay or other amends). Conviction carries certain collateral consequences: a faculty or staff member dismissed from one state institution under the statute may not be appointed by another for at least one year. Even after that time, appointment or reappointment is contingent upon the express approval of the governing board. House Bill 1219 contains other provisions of lesser interest here -- for example, the creation of the new and rather loosely defined crime of "disruption." Under it one may be arrested for joining an assemblage of five or more persons contrary to an order of the president or the governing board. An administrative decision that the requisite "state of emergency" exists appears to be unreviewable, even in the suspension proceeding following arrest or in the criminal trial.

The effect of House Bill 1219 upon governance is clear and drastic. Critical judgments about faculty discipline and sanctions are now in the hands of outsiders -- the referee in the case of suspension, and the criminal jury in the case of dismissal. There is not even any role for an advisory body drawn from within the university -- though the law does purport to preserve internal systems in the application of sanctions not specified there.

The threat is compounded by noting what the Ohio legislature did not pass as well as what it did. While 1219 was pending, serious consideration was given to a bill that would have compelled every state-paid faculty member to show that he worked forty hours each week in his classroom and office or laboratory. Although the mechanism of enforcement was never specified, the prospect is disturbing enough in the abstract. At the end of the summer, the General Assembly was still considering other punitive measures but adjourned without further action, awaiting the report of a special joint committee that had spent much of the summer studying unrest at the campus level.

Meanwhile the Pennsylvania legislature adopted a statute ostensibly aimed only at students which has far-reaching consequences for faculty as well. The text of the law required colleges and universities throughout the country to report certain criminal convictions of or disciplinary actions against Pennsylvania students resulting from campus offenses. The refusal of an institution to agree in advance to report such information would render it (and its students) ineligible to receive Pennsylvania state loans and scholarships. The agency which administers the law later modified its scope so as to require reports only upon students who receive subvention from Pennsylvania. Even as revised, the law still has broad implications for governance. It makes the state agency and the courts, rather than the faculty or administration, the final arbiters of sanctions to be imposed for student transgressions. The law also puts the administration and faculty in a most uncomfortable dilemma: If they do report a student's conviction (even though they feel it will probably be overturned on appeal) they seriously jeopardize his scholarship eligibility. If, on the other hand, they decline to report the conviction to Harrisburg and the agency finds out about it in some other way, they risk forfeiture of eligibility as an institution and serious loss to all their Pennsylvania students. Thus the law really makes administrators and faculty members into informers on their own students. These hazards can be avoided only by remaining ignorant of student offenses.

In addition to direct regulation of conduct, legislatures have also affected governance through a variety of indirect controls. Under a New Jersey law passed last spring, Rutgers University must now obtain prior state approval for any major project involving state funds and for any shift from one project to another of funds already committed. Largely because of its private origins, Rutgers had long enjoyed substantial fiscal autonomy. But last year a new program for the recruitment of disadvantaged students was established and funded without prior state budgetary approval, and this angered the legislators.

The Michigan legislature set whay may become a precedent in external control with its faculty workload conditions attached to the 1970-71 budget. In addition to demanding that faculty members who break college or university rules must be disciplined, the lawmakers stipulated that faculty at Ann Arbor, Michigan State and Wayne must teach 10 classroom hours each; those in the four year colleges 12 hours; and community college teachers 15 hours. Salaries of those who teach less than the specified load are to be reduced proportionally. (The full impact of this onerous condition is not fully appreciated. Testifying last August before the Ohio Special Legislative Committee on Campus Unrest, Chancellor John W. Millett was questioned by the conservative legislator who earlier introduced the abortive 40-hour work-week bill. The specific query was whether Millett would favor conditions attached to the Ohio appropriation similar to those exacted by Michigan. Without hesitation or qualification, the Chancellor replied in the affirmative.)

In California, two budgetary measures impinge directly upon the faculty. The legislature not only denied to University and state college faculty members the 5% cost of living increase given to all other state employees last spring. At the same time the budget for the Academic Senate was cut from a request of roughly $400,000 to about $250,000.. The result of the latter cutback is not, of course, to put the Senate out of business; austerity programs have been adopted and funds may be drawn from other sources for emergency needs. The effect, rather, is to strike a crippling

psychological blow to the central nerve of faculty self-government; it makes clear to the faculty that their ability to direct their affairs is dependent upon the support and good will of an external agency that can and will turn support on and off for callously political reasons.

These selected examples of 1970 legislation will suggest that state lawmakers do indeed "know what to do" by way of intervention. Some states, to be sure, have been relatively free of punitive regulation. Others have adopted only rather simple provisions cutting off financial aid to students who have been convicted of certain disruptive offenses on campus. Meantime, legislatures do much besides pass laws. They give advice, for example, with the implication that those who wish increased state support would be well to follow it. The California regents cannot wholly overlook the legislature's concurrent resolution last spring calling for a revision of faculty tenure policies. Specifically, the resolution urged that every faculty appointee, whatever his rank, be required to serve at least one year in probationary status; that for persons hired at the rank of associate professor or professor the probationary period could not exceed two years, whatever the faculty judgment; and that persons hired at lower rank could not be given tenure earlier than the fifth year of continuous service. The Regents have yet to respond formally to this not altogether welcome advice on a matter which is already under intensive scrutiny within the Board.

State legislation designed for a quite different and benign purpose sometimes indirectly affects university governance. Michigan, like most states, has a conflict of interest law that prevents public officials from receiving the benefits of programs they administer. Last year the State Attorney General ruled that under this law a student could not serve as a member of the governing board of a tax-supported college at which he was enrolled. Since the trustees determine degree requirements, set fees and prescribe other conditions of campus life in which every student had a personal interest, a student sitting on the board might become a judge

in his own case. (The attorney general apparently overlooked the possibility that a student-trustee could simply abstain wherever a conflict of interest threatened.) Clearly the logic of such reasoning would equally preclude faculty or staff membership on the governing board. If applied in other states, this Michigan ruling could cripple current efforts to reform university governance by increasing faculty and student participation at the highest level. The remedy, if any, is surely not to repeal the conflict of interest law, for it serves a vital prophylactic purpose in state government. Rather, the proper approach is to temper its application with an awareness of the special needs of academic governance.

Legislative bodies are not merely givers of laws and of advice. They are also seekers of information through hearings and other avenues. These activities may have ulterior motives, particularly where the subject under scrutiny is controversial. Recent months have seen a sharp increase in use of investigation as a threat to campus autonomy. The same Ohio General Assembly session that enacted House Bill 1219 created a special joint committee to investigate unrest on the state-supported campuses. The group immediately set up several sub-panels, which spent much of the summer travelling from campus to campus holding hearings. The investigation touched matters far broader than unrest, probing the full range of current concerns about higher education. Although its tone was less harsh than the language of House Bill 1219, the Committee's report did render critical judgments about faculty. It found "instances . . . where faculty members had condoned or actively encouraged disruptive activities by students and had even participated in such activities, had failed to teach the scheduled course content, had failed without excuse to meet scheduled classes, had made unwarranted or repeated use of obscene language in open class, and before other students had ridiculed and degraded students holding political and social opinions opposed to their own." Against that background, the Committee was troubled to find "little or no enforcement of professional discipline," apparently because of undue solicitude for academic freedom. The process of hiring and promotion had,

in the legislators' view, been overly delegated to lower officials with insufficient review and supervision. The Committee also deplored the hiring of outside persons to tenure positions without a probationary period. The recommendations followed logically from the findings: initial tenure appointments should be abolished, there should be much more rigid control over the hiring and promotion process, codes of professional responsibility should be promulgated and enforced.

About the time the Ohio Committee was returning from its field work, Indiana launched an extensive legislative inquiry into disturbances on its public campuses. On the same day the Illinois legislature created a special committee to determine the degree of faculty and student culpability for campus disorders and to propose suitable new sanctions. The Chairman stressed at an opening press conference that "we want no Angela Davises in Illinois" and that ways would be sought "to remove tenure from faculty members, where necessary, to keep them from agitating further violence." Several weeks earlier the Virginia General Assembly in an unprecedented interim meeting created a "watchdog committee" to look into all phases of state-supported higher education. The committee's declared purpose was to assure the state's taxpayers that "their funds are not being squandered by students who do not study or teachers who do not teach."

As a supplement to the somewhat sporadic process of committee investigation, both the Illinois and Ohio legislatures have considered some permanent form of campus surveillance responsible to the legislature -- in Illinois a board of inquiry with disciplinary powers over all state institutions; in Ohio a network of monitors stationed on each public campus and reporting directly to Columbus, presumably bypassing not only the campus administration but Chancellor Millett and the Regents as well. Of course the concept of legislative oversight is nothing new in public higher education. Staff members of ways and means committees have regularly visited campuses in reviewing budget proposals. They gather data, interview campus personnel, and may make reports that are both influential and confidential. But

the concept of permanent local monitors or a central committee with disciplinary powers still seems novel and frightening.

Finally, some mention must be made of one recent incursion by the House Internal Security Committee. During the summer of 1970, the Committee sought information from nearly 200 colleges and universities about campus guest speakers -- who they were, how much they were paid and from what funds. The committee's apparent goal -- at least that of its chairman -- was to establish that colleges are subsidizing radical activities by paying radical speakers. Shortly after the requests for information went out, the American Civil Liberties Union warned each respondent of the risks of compliance and offered to defend any college that would refuse. Barely a handful did so. Some replied that they did not keep the information requested; others simply did not answer the committee's letter. But only eight or ten institutions formally refused compliance. Thus without a single subpoena the committee obtained (and later published, despite a federal court injunction) extensive information about campus speakers, their fees and their affiliations. The threat to autonomy and freedom of expression came not so much from the committee that sought the information as from the administrators who dutifully and uncritically complied. Perhaps the faculties of the respondent institutions should share some part of the blame. But as with the rule-filing in New York the year before, few faculties were apprised of the request at all and -- since the affair occurred in mid-summer -- would probably not have countered very effectively even if they had been consulted. It is the failure of so many campus administrators to heed the clear warning of the national ACLU that should give us pause at this point.

In this survey of legislation and legislative activity, we have not gone back farther in time than the spring of 1970. This limitation reflects no lack of earlier material, but only the constraints of the present medium. To tell the whole story would require volumes. Enough has been said just of 1970 to support at least three conclusions: (1) legislatures have intruded

increasingly, in subtle as well as obvious ways, in the affairs of institutions of higher learning; (2) these intrusions have clear and dangerous implications for faculty autonomy as well as institutional independence; and (3) most faculty members and groups are either unaware of the risks or are disinclined to oppose or resist such legislative forays.

B. Litigation and Autonomy. Historically we have regarded the courts as protectors of academic freedom, and more recently of the rights of students. Courts still do serve that function, to be sure. But in recent months (as the NYU cases suggest) courts have also assumed a much less benign role. Judges have now begun to intervene in a variety of campus disputes that are unfamiliar and for which the judicial process is not well equipped. While institutions of higher learning in many cases have invited this intervention -- for example by freely seeking court injunctions against campus disorder -- the extent and manner of the new litigation is ominous. Meanwhile, mainly through the use of grand jury investigations and reports, courts have occasionally been the vehicles for criticism and repression of campus unorthodoxy.

A quick review of the lawsuits resulting from the events of May 1970 suggests how far the courts have come in this direction. In addition to the NYU bar exam and tuition cases, the New York courts decided a number of other controversies over reconstitution and related activities. Perhaps the most extreme case involved a request by a group of Queens College students that they be given instruction in several classes that did not meet as scheduled after Kent and Cambodia. The suit was based on a May 10 resolution of the Board of Higher Education requiring that all units of the City University "remain open to continue to offer instruction to the students . . . ." The resolution also provided that "colleges may adjust their programs of courses, attendance, examinations and grading as in their judgment may seem necessary and

appropriate." The plaintiffs alleged that some of their courses had not met on schedule for the remaining three weeks of the semester and that they had thus been denied an essential part of their education.

The court ordered the administration to furnish special instruction in those courses to the individual plaintiffs, since it was impractical to reopen the entire college in the summer. The court found in the Board's resolution "no discretion as to whether or not to continue the regular course of study" and held that "the faculty had the responsibility to meet with and teach these students." The point is clear: while the Board had left considerable discretion to each campus and to its faculty, the court (like the small claims court in the NYU tuition case) refused to find any elasticity in the regulation. The remedy was as simplistic as the reasoning: If a student has been denied X hours of instruction in Y and Z courses, his claim can be redressed only by forcing the faculty to make up that many hours of instruction.

There are also the campus closing cases. During the few days NYU was closed just after Kent State, students sought a court order to reopen. They claimed that the University had breached its contractual obligation in the catalogue by failing to furnish the promised amount of instruction. But the judge was sympathetic to administration pleas of extentuation; he ruled that "under the conditions and circumstances prevailing, it may not be said that the exercise of discretion in favor of suspending formal classes was arbitrary, capricious or improvident." Even if there had been a breach of contract, equity would not compel specific performance, especially after the end of the regular semester.

Several other institutions received less judicial grace. On the afternoon of the shooting, the Kent State campus was closed down

indefinitely by order of the Portage County Court of Common Pleas. (The worst feature of the decree was not the closing itself, but the delegation to the Ohio National Guard of complete control of access to the campus. Even the President had to have the clearance of the commanding general to go to his own office. For the first few days it was almost impossible for faculty members, let alone students, to get on the campus.) Several days later, the University of Miami, which had voluntarily closed for a short period after Kent's tragedy, was ordered by a Florida state court to reopen. In neither case was the administration even consulted, much less the faculty. The problem is not so much that these decrees were wrong on the merits; one would have to know much more about the facts and circumstances to make that sort of judgment. The fault is that they constituted complete and summary displacement of campus decision-making by external agencies. Kent State was of course in the process of closing and the President did not need a court order to make his sad task mandatory. Miami was about to reopen the following Monday, and did not require a court order to resume operations. Thus in both cases it is more the precedent than the actual judgment that is cause for anxiety.

Litigation now pending as a result of last spring's disorders may bode even worse for faculty interests. The administration of Washington University in St. Louis has been sued for $7.7 million by students claiming a denial of their educational and political rights. A number of students, faculty members and student organizations have been sued by another group of students at Ohio State University for $1 million damages on similar grounds. A comparable case is pending against the President and Regents of the University of Minnesota, though without the damage claim. The State of Indiana, through the Attorney General, has sued

the administration, the governing board and a group of students at the Terre Haute campus to recover some $10,000 (plus $50,000 punitive damages) for injury to state property on the campus during a disturbance last April.

Both the Washington University and Ohio State suits, like those at NYU, focus upon reconstitution of classes last spring. The former cites the Chancellor for making a speech opposing the Cambodia invasion the day of the Kent killings and later in the week urging departments to relax or revise their academic requirements to accommodate student concerns. The Ohio State complaint originally named a senior faculty member (who has since left Columbus and been dropped from the suit); his offense was giving a speech on the day of the Cambodia invasion attacking the campus student conduct rules. Several teaching assistants remain among the defendants, charged with the same transgressions -- all of which allegedly disrupted normal activities to the plaintiffs' detriment.

Although no damage claim is involved, the Minnesota suit may strike most directly at faculty autonomy. The complaint alleges numerous breaches on the part of the President and the Regents, including granting campus facilities to unworthy groups and denying them to worthy groups. One court charges that the defendants did "wrongfully hire, retain and contract speakers, teachers and professors who belong to or have belonged to parties that have been declared subversive by the United States Attorney General -- / to speak, teach and be connected with the University of Minnesota and who have derived benefit at the expense of the Minnesota taxpayers." The Terre Haute suit also attacks University personnel policies, charging a failure to "hire employees, as administrators of [the] . . . University,

persons qualified to guard, protect and prevent damage to the property of said university."

To offer a lawyer's judgment, it seems quite unlikely that any of the plaintiffs will win these cases, much less that they will recover damages. But such predictions are always hazardous, as the NYU tuition refund case indicates. And no matter how remote theprospect of actual recovery the mere threat of being sued, with the expense and loss of time that follows the service of even the most frivolous complaint, may well influence administrative judgment in the wrong direction next time. A single lawsuit might be dismissed as the vendetta or flyer of an angry lawyer. But when the volume of litigation reaches its present proportions, clearly the intervention of the courts must be reckoned with.

The courts have recently assumed another new role that has significant implications for governance. Last spring Prof. David Roth, a nontenure teacher at Wisconsin State (Oshkosh) brought suit in the federal district court alleging he had been denied tenure in violation of his constitutional rights. He claimed that he was not retained solely because he had made public statements critical of the university administration. Once in court he asked that he at least be given notice of the specific reasons for not renewing his contract and an opportunity to present his own case to the decision-making body. For decades it has simply been assumed by university administrators that a probationary teacher could be denied continuing employment without giving any reasons; constitutional problems would arise only if reasons were volunteered and turned out to be either legally vulnerable or patently implausible. Judge Doyle of the Western District on Wisconsin, who has decided many important student and faculty

cases, for the first time upset the presumption. "Minimal procedural due process," he held, "includes a statement of reasons why the university intends not to retain the professor, notice of a hearing at which he may respond to the stated reasons, and a hearing if the professor appears at the right time and place." There were important qualifications to this newly recognized right. The burden of proof rests with the faculty member. Only if he "makes a reasonable showing that the stated reasons are wholly inappropriate as a basis for decision or that they are wholly without basis in fact" need the administration respond and defend its decision. Yet the opportunity to know the reasons and to argue against them seemed to Judge Doyle essential to vindicate the faculty member's substantive constitutional right; if the college could terminate without explanation, legally invalid reasons could hide behind the presumption of propriety.

This case did not take the academic community wholly by surprise. About the same time, the AAUP's Committee A released a proposed set of standards for nonrenewal of probationary contracts. Its recommendations were remarkably similar to Judge Doyle's decision, though they made clear (as Doyle had only implied) that if the reasons given for nonrenewal were valid and supported, then there need be no hearing. A hearing, in other words, was required only to resolve conflicting factual claims or variant interpretations of standards.

The Roth decision clearly benefits junior faculty members since it measurably increases the accountability not only of administrators but of senior faculty as well. Sharp criticism has come from university officials; an amicus curiae brief filed by several national organizations argues that the requisite hearing would be burdensome to faculty and administrators,

would "interfere with their duty to insure quality education", and in order to be effective at all would "obliterate the distinction between tenured and probationary faculty . . . ."

These concerns seem somewhat misplaced. Undoubtedly the hearing requirement will be burdensome, but probably only in a very small number of cases. Many younger teachers may, as the Committee A report points out, simply not demand reasons for their nonretention in order to keep an adverse report out of the record. Many others will undoubtedly be satisfied with the reasons furnished to them, so that no hearing need be held. The prospect of confrontation between senior and junior professors may, of course, constrain or formalize the tutorial role of the elders in large departments. Yet nowhere -- either in the Roth opinion or in the Committee A proposals -- is there any displacement of faculty evaluation of junior colleagues by administrative or judicial judgment. The responsibility remains just where it has always been, or at least where it should be in a balanced system of governance. The only change is that those who have this critical responsibility must explain what they are doing and be prepared to defend an adverse judgment if it is challenged. Increased accountability does not necessarily mean a loss of autonomy.

Wisconsin, like New York, has had more than its share of governance litigation. About the time the Roth case was in the federal courts, the state courts were asked by a group of Madison teaching assistants to order departmental meetings opened to the public. The court suggested at the initial hearing that the department hold a public meeting to reconsider the issue that gave rise to the suit. Without waiting for a final decree, the department opened that particular matter to public scrutiny and went

on to announce that all future meetings would be open. It seems doubtful the judge would ever have ordered so drastic a remedy. Yet the mere pressure of litigation appears to have accomplished the desired result -- more effectively than a major strike of the same teaching assistants over other issues was to accomplish during the ensuing weeks.

Finally, a newer threat from the courts -- grand jury investigations of campus disorders -- has developed. Much the most widely publicized inquiry is that of the special Portage County, Ohio, grand jury called to study the events at Kent State. While exonerating the National Guardsmen, the grand jury placed major blame on those who were victims of the event -- not only the students but the administration and faculty of the University. The administration was cited for "fostering an attitude of over-indulgence and permissiveness with its students and faculty to the extent that it can no longer regulate the activities of either and is particularly vulnerable to any pressure applied from radical elements . . . ." (There is a special irony in the condemnation. Anyone aware of the history of Kent prior to last May knows that the administration has in the past been stern and swift with student radicals. In the spring of 1969 some 60 students were suspended and the campus SDS chapter was banned as the result of a protest which might have gone almost unnoticed on a more active campus.)

The Portage County Grand Jury also had some harsh words for the faculty. Over the critical weekend in May, a small group of professors tried unsuccessfully to meet with President White, in hopes that he might urge the Governor to remove the National Guard. When all channels seemed closed, 23 faculty members released a statement expressing their concern both about violence on the campus and about the presence of the Guard. It urged responsible public leadership to restore understanding rather than to exploit tensions.

Several hundred copies of the statement were circulated on the afternoon of May 3, but the document had been all but forgotten until the grand jury came across it in September and thought they had uncovered evidence of faculty incitement on the eve of the tragedy. The jury's report charged that "their timing could not have been worse" even if the signers of the statements had the purest of motives. If, however, the goal of the statement "was to further inflame an already tense situation, then it must have enjoyed a measure of success. In either case, their action exhibited an irresponsible act clearly not in the best interests of Kent State University." The perversity of this charge is almost comic. The signers of the statement resorted to the only means they felt available to convey a message of the utmost importance to the campus community after finding official channels to the administration blocked. Moreover, many among those termed "irresponsible" by the grand jury had served the night before as faculty marshals during the burning of the ROTC building. They knew the mood of the students. Far better than the citizens of Portage County, they knew that disaster might befall the tense campus unless they could get their views before someone who had authority to end the state of siege.

The grand jury report did not end with the "faculty 23." As though to prove the "permissiveness" of the administration, the report charged an excess of academic freedom on the Kent campus: "A further example of what we consider an over-emphasis on dissent can be found in the classrooms of some members of the University faculty. The faculty members to whom we refer teach nothing but the negative side of our institutions and government and refuse to acknowledge that any positive good has resulted

during the growth of our nation. They devoted their entire class periods to urging their students to openly oppose our institutions of government . . . ." While the report conceded that such "negative" professors comprised only a small share of the total faculty, "this does not mean that their presence should be ignored."

The grand jury soon made clear that it did not intend to ignore the presence of such persons. Twenty five indictments were handed down -- none against Guardsmen, all against students, young nonstudents and one faculty member. Professor Thomas Lough was charged with the crime of incitement, an offense loosely defined under Ohio law. The apparent basis for the indictment was Lough's use as a vehicle for discussion in one of his sociology classes of the cover of the New York Review of Books showing the anatomy of a molotov cocktail. (It was widely believed in Kent and even by some on the campus that at least one faculty member had "taught his class how to make molotov cocktails.")

If the most notable, Kent is not the first such use of the grand jury. Shortly after the big drug raid at Stony Brook, a Suffolk County, New York grand jury launched an investigation of conditions on the campus. Among those subpoenaed were a number of academic administrators and professors. Eight faculty members refused to answer questions in three specific areas -- whether they had used narcotics with students; whether they had advocated use of drugs to students at any time; and whether they discussed or advocated use of drugs with administrators. The New York court of appeals held that no constitutional privilege warranted or protected the professors' recalcitrance, although the state could not make mere discussion or advocacy of use of drugs a crime. Two younger teachers held out, however, and were cited for contempt of court, one for ten days and the other for

twenty.

Another New York grand jury recently struck a much harsher blow. During the spring of 1970 charges were made that an undercover agent had actually roused students at Hobart and William Smith Colleges to protest and demonstrate while he was employed by the county sheriff. Governor Rockefeller ordered a thorough investigation by a special grand jury. In its report released just before Christmas, the jury exonerated the agent, nicknamed "Tommy the Traveller". Instead the grand jury indicted, along with several students and a faculty member, the College itself. (New York law allows criminal charges against corporations as well as individuals). The Hobart administration, alleged the indictment, had "recklessly tolerated certain conduct constituting the offense of coercion", acts for which fines up to $10,000 on each count might be levied. (The accusation against the College apparently stemmed from the charges against the individual defendants; they were indicted for preventing the police from making arrests during a drug raid on the campus in June.) While the present charges do not contemplate the fining or jailing of members of the Hobart administration, there is certainly a possibility that the nation's oldest Episcopal college could forfeit its charter if convicted for permitting its students to resist an arrest. The prospect is quite frightening. That the criminal process could be so directed in New York State -- albeit in the most conservative region of the state -- is even more ominous.

C Surveillance: Snooping, Infiltration and Autonomy. Within hours after the tragedy at Kent State, the Portage County Chapter of the American Civil Liberties Union wired Attorney General Mitchell urging that the FBI be sent to the campus to investigate the shooting. Agents were dispatched

almost at once. Two weeks later the local ACLU chapter was again in touch with the Justice Department -- this time trying as hard to have the agents withdrawn as they had earlier sought to have agents called in. The sharp reversal resulted from an unexpected change in the focus of the FBI inquiry. Originally concerned about the shooting on the hillside early in the afternoon of May 4, investigators began to focus increasingly on the conduct and teaching of several members of the faculty. Class lists were obtained from the University registrar's office; many students were interrogated about the conduct of classes, political and social opinions and even the private, off-campus activities of professors. Senator Stephen Young of Ohio charged that the FBI was also enrolling agents as "plants" in summer and fall classes. (Although FBI Director J. Edgar Hoover has acknowledged the interrogation of and about instructors, Young's charge of infiltration has neither been conceded nor disproved.)

The blame for this excess of investigatory zeal must be shared. Agents obtained the class lists from the registrar's office without a subpoena or even a formal request to the President. As with membership lists of student political groups voluntarily (surrendered) to a congressional committee in 1968 and the guest-speaker data obtained in 1970, a bare request apparently sufficed to obtain compliance. Most registrars would probably have done the same thing under the circumstances. Yet if the issue had been referred to the President, he might well have consulted the faculty. And had the faculty given due deliberation, they would likely have told the administration and the FBI that nothing less than a formal subpoena should be heeded.

The agents must also be faulted, of course, for asking improper questions. Yet the pattern is complex, for the agents who probed the teacher-student confidence were the same agents who enabled the Justice Department to

discredit the sniper theory of the shooting. To the agents in the field, there was presumably little difference between the two lines of interrogation -- the one of eye-witnesses to the shooting on the hillside, the other of eye-witnesses to alleged classroom incitements, to political meetings and to student-faculty conferences. The distinction is subtle if critical and it is vital to an appreciation of academic freedoms. For government to ask questions about a public event such as the shooting intrudes upon no collegial relationship and breaches no professional confidence; the fact that the subject of the inquiry occurred on a college campus is for this purpose irrelevant. But for a police officer to obtain class lists from a university official and then proceed systematically to ask students what their professors said in class and in conference about controversial topics strikes at a central nerve of academic freedom and autonomy.

Recent revelations of military spying on civilian suggest the Kent affair is no isolated incident. The principal use of army intelligence personnel for surveillance apparently has involved public figures. But one former member of an intelligence unit in New York reported that his assignment -- with tuition paid by the army -- was to enroll in the black studies program at NYU, monitor all classroom discussion and report it to his superiors.

There have also been recent disclosures of extensive use of agents provocateurs on college and university campuses. Best known is the "Tommy the Traveller" incident which led to the Hobart grand jury and to the indictment of the college. During a disciplinary hearing at Ohio State, it was revealed that the two bearded "students" who closed a

campus gate at a critical moment last spring, touching off rock throwing and other violence, were in fact state highway patrolmen doing undercover work on the campus. A grand jury investigation of disorder at the University of Alabama revealed the presence of an undercover agent, working for both the FBI and the Tuscaloosa police, identified by two local attorneys as a "chief campus agitator." Similar disclosures have come at the University of South Carolina, where an undercover agent was charged along with other students for "malicious mischief" at a draft board office, but was dropped from the case when his identity emerged. The list is an ominously lengthening one.

No less reputable an authority than the Scranton Commission has recognized how grave a threat such surveillance poses to campus freedom and autonomy. "Quite aside from the possibility of abuse," the Commission warned, "these methods may compromise the openness of the university community, make its members reluctant to express themselves freely, and cause each man to suspect the good faith and integrity of his neighbors." The role of the agent provocateur is especially troubling: "It is a matter of no great moment if he becomes a passive participant in a sit-in. But it becomes deeply troubling when he begins hurling rocks, and is plainly intolerable when he urges others to engage in violent conduct." What is most ominous for academic freedom is the mounting evidence that local grand juries do not always share these views.

To what extent is faculty autonomy jeopardized by surveillance activities? Where agents are surreptitiously enrolled in classes for the purpose of monitoring the views either of controversial faculty members or politically active students, the threat is clear. (The line

may be hard to draw in practice, however. Even a policeman can of course be a bona fide student. Senator Young's charge about infiltration at Kent was difficult to prove because a majority of members of the National Guard unit assigned to the campus on May 2-4 were in fact full or part-time students somewhere in the area.) A comparable if less direct threat arises when students are hired as agents or agents are enrolled as students for general surveillance work, and only incidentally gather information on classes they attend. We have not yet reached the point of the undercover faculty member, and we may never reach it. If the time comes that members of faculty committees and participants in senate meetings may in fact be working for the police we will be in serious trouble indeed.

D. Collective Bargaining. No one doubts that the advent of collective bargaining by college and university faculties will profoundly reorder existing relationships among campus constituencies. The critical issue here is the extent to which that reordering will affect faculty autonomy and power. It is too early to do much more than speculate. Although McConnell is clearly right that "collective bargaining will become much more common than it is today," the incidence of formal labor agreements between faculty and administration is still limited and sporadic. Various factors have deterred the spread of collective bargaining -- state laws forbidding public employee organizations and strikes; generally rising salaries and ameliorating employment conditions; relatively benign administrations; and effective faculty representation through traditional channels. But there are now many new pressures pushing in the other direction -- increasingly hospitable state legislation; sudden deterioration of compensation and market conditions for faculty; repressive legislation and governing board policies

in the wake of campus unrest; major policy shifts toward collective bargaining by AAUP and NEA; rapid proliferation of junior and community colleges where conditions are most conducive to bargaining; and the spread of collective agreements in secondary education and other analogous sectors. While the faculties at Harvard, Yale, Berkeley and Michigan may never be unionized, collective bargaining is clearly the wave of the future for professors in many state colleges and smaller universities as well as in most two-year institutions.

At least in theory, almost all issues of concern to faculty are potential topics for bargaining. The items recently submitted for contract talks at the City University of New York suggest a range of negotiation far beyond salary, fringe benefits and workload. The California AFT argue that "collective bargaining is obviously a fair and rational method of ordering administration-faculty relationships" and that "collective bargaining transfers power to the faculty." The Berkeley AFT local proclaims that it is committed "to establish a grievance procedure which will permit every faculty member to participate more fully in the general academic process, by assuring that his voice will be heard on matters that concern him and his right to do the job as he sees fit." There is no question that many aspects of governance are proper and probable topics for negotiation.

Yet a faculty union cannot achieve all its goals at once. Like an industrial union, it must set priorities; any good bargaining team must be prepared to sacrifice some objectives to gain others. The clearest conflict would appear to be between tangible and intangible benefits -- specifically between participation and compensation. The first year of

collective bargaining in CUNY suggests that the union has made a conscious trade-off: On the one hand it has obtained a contract with the highest salary scale available anywhere in the country. On the other hand, the stake of the faculty in university governance appears to have diminished. Early in the new contract period the Board of Higher Education's law committee proposed that department chairmen, traditionally elected by their tenure colleagues for a three year term, be appointed. The change was justified by the exigencies of collective bargaining; under the new contract the chairman serves as the first step in the complex grievance procedure and has other responsibilities arguably incompatible with elected status. The proposal drew an angry response from the Legislative Conference and other faculty groups. It also evoked the editorial concern of the New York Times which argued that appointment of chairmen would "be a blow to academic morale" and would "force an increased reliance by the rest of the faculty on shop stewards in a further departure from academic traditions."

Early in the fall of 1970, the Chancellor of the City University announced major revisions in tenure policies. Full time faculty members would become eligible for tenure only after five years of continuous service, instead of the three years previously required. The policy also cut the number of tenure recommendations to be processed this year to half the number that would ordinarily become eligible. The Legislative Conference protested, calling the change a "quota system" in place of the "merit system" by which tenure has traditionally been determined. The Conference also argued that the new policies severely restrict the role of faculty colleagues in judging the progress or promotion of

probationary teachers.

Other changes will suggest the inherent tension and probable trade-off between participation and compensation in a collective bargaining arrangement. Many students of governance (notably Earl McGrath and T. R. McConnell) have urged greater faculty participation in governing boards. Yet it seems most unlikely that trustees who have signed a collective bargaining argreement with a faculty union could or would select members of the union to sit with them. The cleavage between union and management will tend to increase as relations become rigid and the prospects for formal or informal participation at the highest level will diminish correspondingly.

The power of the faculty may also be undermined in a quite different way. Presently one of the most effective sanctions a faculty has against violations of academic freedom is AAUP censure. In those institutions where the AAUP is selected as the bargaining agent, that sanction will remain unimpaired. But where another group wins the election, the administration may refuse to deal with AAUP because of its felt commitment to the exclusive bargaining agent. Hence a Committee A investigation may be unable to proceed beyond the threshhold, unless of course the bargaining agent offers its cooperation and blessing. Administrators sometimes balk for other reasons, such as pending litigation, and the refusal of their cooperation does not always foreclose investigation that may lead to censure. Yet the grievance procedures of unofficial faculty groups (including the senate, if one remains) are undeniably less effective once a bargaining agent has been selected.

Finally, there is the lingering question of what happens to the senate or other organ of faculty self-government. Although most issue within

the senate's purview are presumably bargainable, the structure of negotiation and representation inevitably leaves many lacunae. The AAHE-NEA Task Force on Faculty Representation and Academic Negotiations surveyed this question at some length. Despite the obvious tensions between preexisting faculty bodies and bargaining agents, they found enough residual issues to urge "that an academic senate be established even when a bargaining agent has representation rights on a campus. If the senate can implement effectively the concept of shared authority in dealing with problems of educational policy, then it is likely that the senate's influence will ultimately extend to other substantive issues as well." Failing such a dual structure, the Task Force recognized that residual "issues of educational policy and administration . . . may revert to the status of management prerogatives, as is the case in conventional industrial enterprises."

Others are skeptical of the chances for survival. Ray A. Howe, the director of labor relations for the Dearborn (Michigan) Community College District, feels the "hope may be dim" for coexistence between a union and a senate. He quotes the chairman of the AAHE-NEA Task Force, a year after the issuance of its report: "Where a union comes in the deal is off as far as the senate is concerned." Professor Walter Oberer of Cornell, who has studied these problems with care, argues that a strengthening of existing senates is essential as an antidote to pressures for unionization of faculty. He notes that these avenues or representation are "not necessarily mutually exclusive," although the one <u>will</u> exclude the other "if the first encompasses <u>all</u> issues." At the very least, the jurisdiction and power of a preexisting senate would be curtailed by the advent of collective bargaining and might atrophy completely.

These comments about collective bargaining are, as we have said, largely speculative. One caveat should be clear but bears stress: These changes are by no means the inevitable result of collective negotiation by a faculty, nor is it likely that all of them would occur on any one campus. Undoubtedly the most important variable is the selection of a bargaining agent. If the senate is chosen by a majority of the faculty, then relations may change very little. If the AAUP or another professional faculty organization wins the election, relations will undoubtedly change. But the trade-off between compensation and participation that appears to be taking place in CUNY is far less likely. Even if a union is named the bargaining agent, life will be much different under the Teamsters than under the California Union of Associated Professors.

There is one other type of collective negotiation that deeply affects faculty autonomy. Many valuable lessons emerge from the experience last spring of the teaching assistants' strike at Madison. Ostensibly the struggle was between the TA's and the administration. The real conflict was, however, between the junior and the senior faculty. At one point the administration offered to settle on terms that were not too far from those the TA's had demanded. Just as the agreement appeared probable, intense opposition arose within the senior faculty -- a group which had been largely a bystander up to that point. When it appeared that the matter of course control and content must go to the bargaining table along with salary, health insurance, office space and telephone service, the tenure professors organized a strong counter force. Ultimately they insisted that the contract qualify any assurance of TA participation in departmental academic planning with this proviso:

"Such mechanisms shall not infringe upon the ultimate responsibility of the faculty for curriculum and course content." Here was a vivid illustration of the trade-off principle: The TA's won many lesser victories on tangible issues, but lost the major intangible issue which many of them felt brought about the strike. The senior faculty yielded on most of the tangible issues -- in that they forfeited control over the allocation of funds now committed to TA benefits -- but prevailed on the critical issue of determination of curriculum and courses. It is hard to say who ultimately won the Madison strike. Perhaps all that is clear is that the administration lost power in the process of preserving peace and rationality.

E. Austerity. As with collective bargaining, no elaborate demonstration is needed to prove that higher education has suddenly entered a period of severe austerity. Over the past year and a half university presidents have warned increasingly of the dire consequences of collision between rising costs and declining incomes. The severe financial bind affects public and private institutions alike, although the causes are quite distinct. Confirmation of these conditions has come most recently and dramatically from Dr. Earl F. Cheit's comprehensive study for the Carnegie Commission. (Even that report does not show the full force of the pinch. Cheit listed among a rather small group in his sample "not now in trouble" the College of San Mateo (California). The week after the report appeared, the President of San Mateo announced upon resigning that the college faced the worst financial crisis in its history. The defeat of a local tax measure in September had forced a reversion to the pre-World War II level of support and threatened a

40% reduction in faculty and staff. Hence one of the seemingly healthiest of the institutions studied by Cheit has added an ironic postscript to his report.)

This is not the place to review the causes or the detailed implications of this new austerity. We are concerned solely with the effects it may have for faculty autonomy. Already the market for recent and prospective Ph.D.'s has shrunk to the point where dozens, even hundreds of applicants seek a single position, and the major graduate schools hire only a tiny fraction of the number of persons they turn out each year. There are freezes on new hiring all across the country, and sharp cutbacks at John Hopkins, UCLA and other institutions both public and private. Columbia's School of the Arts, NYU's program in Slavic languages, Long Island University's projected library, Irvine's classics and German programs, Stanford's repertory company and summer festival, are all casualties or victims of the current austerity, and the medical schools at Georgetown, George Washington and other universities may go the same way. By the end of the academic year an extensive necrology of vulnerable programs, departments, institutes and centers will demonstrate how critical the situation has become.

But are the faculty likely to suffer from hard times, and in what ways? Salaries may go down (or fail to keep pace with rising living costs), and workloads may increase. But these are only the obvious and surface effect of any recession. Far more severe will be the effect of austerity upon that measure of faculty autonomy that derives from control over resources. As funds decline even slightly, faculty power drops sharply for several reasons. First, the most vulnerable funds are those not already committed, and these are the funds in the

allocation of which the faculty now enjoy some measure of autonomy. Clearly a 5% budget cut can effect a nearly 100% cut in the resources subject to such allocation. Second, a freeze on new hiring or the inability even to fill positions vacated through death, retirement or resignation constrainsone of the most important shares that faculty have both in university governance and in shaping the character of the institution. When there are no new or even old positions to be filled, reduction of faculty power follows inexorably.

Third, the most vulnerable of academic programs tend to be those in the planning and management of which the younger faculty have the greatest stake. Experimental programs are likely to be cut first, along with those of marginal interest and declining enrollment. Programs to improve teaching, to provide closer student-faculty contact, and programs in ethnic or third-world studies are also highly vulnerable. Least vulnerable are the large, core, established academic departments, in the management of which the senior faculty have the dominant role. Along with the net reduction in the power of all faculty caused by austerity, there is quite likely to be a disproportionate disfranchisement of the younger faculty at the very time when that group is pressing hardest for a share of the power they have long been denied. Coupled with the rapidly shrinking job market for beginning teachers, these pressures may spur collective bargaining in the younger groups and create new cleavage between professor and teaching assistant.

Finally, one of the most vulnerable items is the support of faculty self-government itself. The effect of a reduction is only partly fiscal; the California Senate clearly would continue its essential work even if

the appropriation were cut further. The major impact is psychological. The California legislature has so exercised its fiscal control as to suggest that faculty senates share with student associations a dependence on external flavor that some call "sand-box government." It is hard to assert the "independence" of a body that the state legislature can cripple in this cavalier fashion.

F. Self-Regulation. The last limitation on faculty autonomy is also the most puzzling. The process of prescribing standards of professional conduct and ethics, while seemingly enhancing faculty autonomy, may eventually reduce power. In recent months a major share of faculty time and energy has gone into the process of self-regulation. The AAUP Council, professional societies at the national and regional levels, and hundreds of faculties and faculty senates, have set about the task of defining standards of performance and ethics and prescribing means of enforcement. Occasionally the drafting process has been preempted by an impatient administration or governing board, but the preference has been to leave the task to the professors themselves. Thus a profession which even before the spring of 1970 showed considerable responsibility for maintaining its own standards -- perhaps more than any other profession -- has redoubled its efforts in order to retain or regain public confidence.

There is little question this commitment is necessary. The Scranton Commission undoubtedly reflected even the liberal consensus when it charged that "faculty members have been reluctant to enforce codes of behavior other than those governing scholarship" and that "too little self-regulation by faculty members has often resulted in reduction of academic freedom." The gap has not been so much between the amount of

deviant conduct and the measure of control, but rather between the extent of self-regulation and the extent of public awareness. The need has been most recently to codify much that has been common law of faculty responsibility for decades, to specific behaviors that justify sanctions, and to publicize the channels by which formal complaints may be pressed against irresponsible members of the profession. It is to the credit of the faculty that this burdensome and rather distasteful task has been undertaken so willingly.

There is a dilemma, however. On the one hand, autonomy will surely be lost if faculties do not proclaim their own standards of responsibility, for insensitive external bodies will preempt the task and impose much harsher rules. On the other hand, there is a risk to autonomy in doing what must done. No experience so well illustrates that hazard as the handling of the Angela Davis case by the California Board of Regents. To overrule the recommendation of several faculty committees and the UCLA Chancellor on a nontenure appointment was no easy task. It was made particularly difficult by the adoption only a year before of a regental commitment not to impose political tests on hiring within the University. The evidence left little question about Prof. Davis' intellectual distinction, scholarly achievements or pedagogical skill. The only area in which she might be faulted was that of professional responsibility. Thus the Regents turned to the one impeccable source -- the statements of the AAUP on extramural utterances and other ethical matters. The special committee of the Board appointed to review the case concluded that several speeches Miss Davis had made in other parts of the state "are so extreme, so antithetical to the protection of academic freedom, and so obviously so deliberately

false . . . as to be inconsistent with the qualifications for reappointment to the faculty of the University of California." To establish the relevance of intermperate extramural statements and disdain for academic freedom to a teacher's status, the Regents' Committee seemed to rely exclusively upon several quoted AAUP statements.

In a dissenting opinion, Regent William K. Coblentz argued that the relevant AAUP statements (a) were not intended as enforceable codes of conduct but rather as desirable norms; and (b) compelled the retention rather than the dismissal of Miss Davis on the facts presented to the Board. Yet a decisive majority of the Board rejected Coblentz' arguments based on academic freedom principles and constitutional law and terminated Miss Davis' contract a few days before its expiration.

Since the Davis case, at least one other governing board has seized upon AAUP standards as though they were quasi-criminal codes of punishable behavior. This experience suggests that self-regulation is a two-edged sword. Faculties that adopt standards of professional responsibility to set high goals and ideals may find a cynical governing board ready to pervert those standards to a purpose for which they were never intended. It is not hard to imagine a controversial faculty member who has publicly attacked the trustees being dismissed because (in violation of the faculty senate's own code) he has failed to "set an example of detached scholarship" or has not "shown due respect for the opinions of others." There is probably no way to prevent such distortion of professional codes; if the trustees want badly enough to fire the controversial professor they will do it anyway, with or without scripture to cite.

The obvious caution is to indicate at the start of the code that enforceability and punishment are not its main functions -- though such caveats are unlikely to deter a governing board anxious to find ways of turning a faculty upon itself. The dilemma is unavoidable: The faculty that does not regulate itself will be regulated more harshly from without; the faculty that does regulate itself may simply give useful ammunition to its enemies.

## III. THE FUTURE OF AUTONOMY: NEW SAFEGUARDS FOR ACADEMIC FREEDOM

On the campus as elsewhere, prevention is far preferable to cure. Yet prevention is an uncertain safeguard for such ephemeral interests as those of academic freedom. Threats of the kind we have surveyed are often planned clandestinely and are not made public until the time for effective opposition has passed or the potential opponents have been so sharply divided that no viable response can be mounted. Even where notice is public the meaning of such threats is not clear to many faculty members until it is too late -- as witness the Henderson Law in New York and the House Committee's campus speaker questionnaire. Sometimes the nature and extent of the threat are not apparent when general policy is being made and opposition may be voiced; the cutting teeth are added later when it is no longer possible to protest.

Perhaps most important, the academic community is simply not organized to protect itself since it has seldom been faced with threats warranting such cohesion. Save perhaps for AAUP, its patterns and structures seek much more limited and more tangible objectives -- pooling knowledge in particular subject areas, disseminating findings, gaining financial support for scholarly activities, setting academic standards and qualifications, etc. Even those few groups organized partly for professional self-preservation have emphasized procedural more than substantive safeguards; they have relied upon techniques -- notably investigation and litigation -- well adapted to meeting familiar forms of repression. The very success of these efforts in the past may help to explain why the nature of the threat itself has so changed in recent years.

If the prospect is rather dismal, it is not hopeless. There are several approaches the academic community may take -- some conventional, others rather novel -- to safeguard vital interests against hostile forces. These remedies follow under several headings:

A. Information. As recent experience has taught, a better informed academic profession would also be better protected. There is limited awareness of pending legislation that may affect autonomy and governance. Much less is there adequate warning of administrative changes and executive orders. What is needed is a wholly new approach to gathering and disseminating vital information, working through contacts in major state capitals, journals that do gather such information, and the like. Once the material is in hand it needs to be disseminated widely -- not only for informational purposes but also to spur early organization that might avert repressive action. And materials that appear to have only momentary interest must be more carefully filed and indexed, their potential cannot always be assessed at the time. (Illustratively, Volume I of the opinions of the Attorney General of Arizona is unavailable in Phoenix. The book contains an opinion of great importance on the constitutionality of school prayer and Bible reading. Only four copies appear to be extant throughout the United States, and they are in the hands of unusually vigilant or acquisitive collectors.)

Some informational tasks may be facilitated by closer collaboration among faculty organizations; while they may be adversaries in collective bargaining elections they still have more interests in common than in opposition. Cooperation may also be possible with other professional groups -- associations of elementary and secondary teachers, librarians'

groups, student organizations, enlightened labor unions in other fields, etc. Most important, the interests of faculty are increasingly parallel to those of embattled administrators. The two constituencies should make common cause wherever feasible; the natural tension that exists between professors and presidents or chancellors surely does not preclude some sharing of information and occasional joint ventures. (Witness, for example, the close liaison between AAUP and such groups as the Association of American Colleges and the Association of Governing Boards.)

B. Participation. The academic profession must seek to expand its participation at two distinct levels where its interests are implicated -- in the centralized law-making process and in the local law-enforcement process. Neither suggestion requires elaborate explanation.

Where legislation is pending that affects faculty autonomy, every effort should be made to obtain an audience and present an effective case before legislation becomes final. Occasionally a legislative committee will invite the formal submission of faculty views, as did the Ohio Special Committee last summer (with probably beneficial effects if one compares the Committee report with House Bill 1219.) At other times the committee may summon only university administrators (as in Indiana during the summer and fall of last year.) Or it may carefully select the professors it wants to hear, so their unrepresentative testimony will coat the resulting legislation with a thin patina of legitimacy. Yet even token participation is better than none, and it is likely to assure that some faculty voice will be heard the next time.

Participation at the campus level is no less vital to autonomy. It would be foolish to suggest that the tragedies at Kent and Jackson could have been averted if the faculties had played a more active role

in determining when police would be called. In neither case was the President even consulted, so the absence of channels for faculty participation in law enforcement decisions cannot be blamed. But for the future, the realization (if only as a result of Kent and Jackson) that campus administrators will be consulted before police or Guardsmen are deployed makes some assurance of faculty consultation all the more imperative. The implementation of the imperative is more difficult. Perhaps a bargaining agent or a faculty senate can insist upon a stake in major security decisions, although experience shows such a guarantee is not always adequate. Presidents and chancellors may in the future be more anxious to diffuse their own responsibility for such hazardous decisions and will therefore welcome a faculty request for participation. Whatever the obstacles, the goal is sufficiently important to warrant substantial faculty effort.

C. Legislation. Most of what has been suggested to this point is defensive in nature. This is probably not the time to be overly sanguine about enhancing the safeguards for academic freedom in those very forums that generate the gravest threats. Yet the quest should not be abandoned for wider adherence to basic precepts of academic freedom. Every opportunity to defend should be seen as a chance also to take the initiative. Any witness appearing in defense of academic freedom should, for example, offer suggestions of ways in which laws or regulations could better safeguard faculty, staff or student interests -- by guaranteeing fair prior hearings, by repealing loyalty-security requirements, revoking speaker bans, etc. (After all, the Ohio Committee did come down quite hard in support of adequate notice, an impartial hearing, internal

review and confidentiality after hearing AAUP witnesses -- a view that does not square easily with the legislation enacted earlier in the year.)

D. Investigation. Ad hoc committees for investigation have long been the stock in trade of AAUP -- mainly for complaints in the area of academic freedom but also occasionally in respect to governance questions. Some professional associations have conducted their own investigations where the academic freedom of members of the discipline is especially affected; a few groups, such as the Association of American Law Schools, have a parallel censure procedure as well as the machinery for investigation. Other disciplinary societies have recently created academic freedom committees whose work will supplement or complement the work of Committee A. Meanwhile the Association of State Colleges and Universities, in withdrawing its endorsement of the AAUP 1940 Statement on academic freedom, has indicated it may send committees along to keep an eye on ad hoc AAUP committees exploring academic freedom complaints.

This proliferation of interest in investigation raises the spectre of overlapping or duplicative work. There is also the danger of conflict and lack of coordination that may hurt the efforts of all faculty groups. (Note the case of a faculty member who settled his academic freedom grievance with the administration out of court on condition that AAUP would not investigate, and then sought assistance from the academic freedom committee of his own professional association, which did authorize an investigation. In the future, it will probably be harder for either organization to represent the interests of a faculty member mistreated by that administration.)

E. Litigation. Finally, there is of course resort to the courts. Over the years, AAUP, NEA and other organizations have been highly success-

ful in striking down speaker bans, loyalty oaths and other restrictions by means of test cases. Sometimes they have brought suit on behalf of the organization itself; sometimes they have supported litigation brought by individual faculty members; and on other occasions they have participated through friend-of-the-court briefs in cases brought by others. Litigation has been and continues to be a vital means of safeguarding academic autonomy.

Yet several cautions qualify the increasing resort to the courts in such matters. First, not every threat to academic freedom is in fact amenable to suit. A legislative resolution is virtually invulnerable to attack, however clear its chilling effect may be. A Congressional or state legislative investigating committee can seldom be enjoined, even when it ranges far beyond its charter and inquires into highly sensitive and delicate relationships. Until very recently, it was assumed that the non-renewal of probationary appointments could not be challenged in court unless an invalid reason were gratuitously given. Statutes that threaten academic freedom in the abstract may have to await court challenge until they are actually applied in such a way as to deprive individuals of constitutionally protected rights. Various barriers of this sort make the courts more remote than laymen often suppose.

Second, litigation is an expensive and time-consuming way to vindicate individual rights, even where it is the only way. Unless volunteer laywers are available and are prepared to carry the case through all the courts to which it may be appealed, legal fees may run into thousands of dollars. In addition, there are substantial filing fees and printing costs. More important, the major test case may require a plaintiff who is willing and able to go without pay for a considerable time; if he either takes another

job or complies with the challenged requirement, the case may be rendered moot.

Third, test cases do not always best serve the long-range goals of those who might bring them. As a tactical matter, a statute or regulation of doubtful validity may be better left untested. A legislature may have overreached itself for essentially political reasons, and may care little about enforcement. In other cases the very defects that impair its constitutionality -- vague language and uncertain scope, for example -- also make the law difficult or even impossible to apply. A decision striking it down will get the objectionable provisions off the books, to be sure, but may also serve notice to the legislature or the agency how to write a new law that will serve the same ends but will withstand judicial scrutiny. Thus practical wisdom may sometimes militate against litigation even where the outcome is predictably favorable.

Finally, the increasing submission of many academic questions to the courts poses subtler risks. Judges are seldom expert in matters of university governance or the special needs of the academy. Courts asked to decide one aspect of a controversy may go on to reach other related issues, making some bad law and setting dangerous precedent along the way. Meanwhile, readier resort to the courts for the settlement of academic disputes may cause the international decision-making organs to atrophy. Hence the collateral risks of litigation must be weighted against the main benefits in each case.

Despite these hazards and limitations, litigation remains an essential safeguard of academic freedom. Loyalty oaths and speaker bans could never have been eliminated by any other means; persistent attempts

at legislative repeal were uniformly unsuccessful. Only a court can enjoin the enforcement of an oppressive statute. A judicial decree may be essential to assure the reinstatement of a wrongfully dismissed faculty member. And where a criminal prosecution encroaches upon academic freedom or autonomy, there is of course no choice whether to litigate the issue.

Yet litigation is not the best solution for all academic freedom controversies. It is a tool of great power that must be used sensitively and sparingly, for litigation readily invites undue reliance. Indeed, the value of the lawsuit where it is essential to vindicate academic interests may be undermined by too frequent resort to the courts where the case is less urgent.